

Serial No. 10/812,137  
Amendment Under 37 CFR §1.111  
Response to Office Action dated October 6, 2005

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**REMARKS/ARGUMENTS**

Applicant respectfully requests reconsideration and withdrawal of the rejections set forth in the above-identified Office Action.

By this Amendment, independent claim 32 and dependent claim 42 have been canceled in favor of new independent claim 43. Claims 33, 34, 36 and 37 have been amended to depend from claim 43, and minor changes were made to claim 37 due to the wording of new claim 43.

In addition, claims 44-54 have been added to further define Applicant's invention. Each of claims 43-54 are fully supported in the specification.

New claim 43 more specifically recites the various process steps of forming a multilayered film in accordance with this invention. This claim calls for, inter alia, providing a sealant film which contains the antifog composition, providing a nylon film, and adhering the sealant film to the nylon film. The claim further recites adhering a protective film to the nylon film, with the protective film being selected from the group of films that were previously recited in claim 42. The claim then recites the step of winding the film into a roll. As a result, the protective film prevents the antifog composition of the sealant film of one layer from migrating into the nylon film of an adjacent layer.

New claims 44-50 are dependent upon claim 43 and recite various embodiments of the subject invention. These claims, which are similar to dependent claims of the parent patent, call for the protective film to comprise polyurethane (claim 44), the protective film to comprise polyvinylidene chloride (claim 45), the multilayered film to consist essentially of the recited layers (claim 46), the sealant film to comprise polyethylene (claim 47), the nylon film to comprise nylon 6 (claim 48), the nylon film to comprise a nylon/EVOH/nylon structure (claim 49) and the multilayered film to be heat shrinkable (claim 50).

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Independent claim 51 is similar to claim 43 but recites that the protective film is polyurethane. Claims 52 and 53 are dependent on claim 51 and are similar to claims 49 and 48, respectively. Finally, independent claim 54 is similar to claim 43 and recites that the multilayered film consist essentially of the recited film layers.

It is respectfully submitted that claims 33-37 and 43-54 are patentable and should be allowed.

The thoroughness of the review of the application by Examiner Schatz is appreciated. It is believed that in view of the above amendments and the following remarks, the rejection of all of the claims should be withdrawn and all pending claims should be allowed.

To briefly summarize the invention claimed in this application, Applicant has invented a process of making a multilayered film. The film has particular use in sealing a food package which includes a container having an open portion, with the multilayered film sealing the open portion. The multilayered film is an antifog/barrier laminate useful in meat packaging, and in particular packaging in a controlled atmosphere environment. The film itself is claimed in the parent application, which has issued as USP 6,726,968. The food package is claimed in a companion application that has issued as USP 6,942,908.

The problem with the prior art films used in this type of structure was that the antifog composition that was either blended into or coated on a sealant film would tend to be drawn toward polar materials (such as nylon) and away from non-polar materials, such as polyethylene which is typically used as the sealant layer. This is a particular problem when the film is rolled up after manufacture, because the antifog-containing layer is brought into direct contact with the adjacent nylon layer. This causes the antifog component to migrate out of its existing layer and into the nylon layer, which compromises the performance of the nylon layer as well as degrades the antifog property of the film.

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Applicant's claimed invention is a method in which, inter alia, a protective film is provided on the surface of the nylon film that is opposite to the antifog-containing film. The protective film is selected from the group of films consisting of polyvinylidene chloride, polyurethanes, amine modified polyurethanes, epoxies, polyesters, acrylics, polyols and combinations thereof. This results in the antifog-containing film of one layer in the roll from being in direct contact with the nylon film of an adjacent layer of the roll. As a result, migration of the antifog component is prevented.

The claims of the present application define a method of making the multilayered film that is claimed in parent patent USP 6,726,968. The method claims of the instant application are likewise submitted to be patentable.

In the Office Action, the claims were rejected on several different grounds. Since the presently submitted claims include the features of now-canceled claim 42, it is believed that the only relevant rejection for discussion herein is the rejection of claim 42 set forth in the Office Action.

Claim 42 was rejected under 35 USC 103 (a) as unpatentable over Toney et al. USP 5,520,764 in view of Brazier USP 3,912,843. It was alleged in the Office Action that Toney et al. disclose a process for forming a multilayered film comprising positioning a sealant film 12 onto a first surface of a nylon film, wherein the sealant film has an anti-fog composition that is either incorporated therein or coated on a surface of the sealant film opposite the nylon film, and applying a protective film onto a second surface of the nylon film. It was acknowledged by the Examiner that Toney et al. disclose the protective film of the claimed composition as being added to the first surface of the nylon film, as opposed to the second surface of the nylon film as claimed. Brazier was relied upon as disclosing a method of forming a multilayered film onto a first surface of a nylon film and further disclosing a protective film applied to the first surface of the nylon film or alternatively to a second surface of the nylon film. It was asserted that it would have been obvious to modify the method of Toney et al. by applying the protective film to the second surface of a nylon film as

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taught by Brazier. This rejection is most respectfully traversed as it may be asserted against the present claims.

The Toney et al. patent relates to corona treatment of antifog film laminates. The film of Toney et al. includes a polyolefin layer 16 which includes an antifog composition, a polyolefin film 18 adjacent thereto (preferably an EVA film), and a polyester or nylon film 20 adjacent to the polyolefin film 18. Toney et al. discloses that it is optional to coat the surface of layer 20 facing first substrate 12 with a saran coating. It appears that Toney et al. is mainly concerned with a PET film that has a saran coating, as evidenced by their examples. Toney et al. states that the "optional saran coating adds oxygen barrier properties to the lidstock material, making it particularly useful in connection with the use of barrier foam trays" (emphasis added). See column 5, lines 38-40.

Thus, it can be seen that the saran material of Toney et al. is used as an internal oxygen barrier layer, and not as a "protective film" as used herein. Moreover, the saran layer is optional in Toney et al., as mentioned several times in that patent.

It is interesting to note that Toney et al. recognize that the antifogging agent will migrate to the surface of layer 16, whether it is in layer 16 or layer 17 in the embodiment of Fig. 2. However, it is clear that Toney et al. were totally ignorant of the problems resulting from transfer of the antifog composition of one layer to an adjacent nylon layer when the laminate is rolled up. Thus, not only does Toney et al. fail to disclose the structure created by the method steps of the claimed invention, they likewise fail to have any recognition of the problem which was overcome by Applicant's invention.

In the rejection of claim 42, Brazier was applied to overcome the deficiencies in Toney et al. However, it is submitted that Brazier is non-analogous art that the skilled artisan would not look to when trying to solve a problem with the construction or process of Toney et al. Moreover, even if the references were combined as suggested, the claimed invention would still not be shown.

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Brazier does not disclose an antifog-containing film structure. Rather, Brazier is directed to a flexible packaging film that can be used in a pouch or bag form. Brazier states that films of nylon/polypropylene/saran/polyethylene were known (see Fig. 1) but Brazier proposed to bury the nylon layer as an interior layer, with the polypropylene layer being an exterior layer. Brazier states that unexpected advantages flow from providing the polypropylene film as an exterior layer. At column 3, lines 55-58 it is stated that the packages formed from films of his invention have higher compressive strength than packages formed from the prior art film. In the structure of Brazier, the saran barrier acts as a gas barrier to reduce the transmission of oxygen and other gases (see column 1, lines 22-23). It is respectfully submitted that the saran layer of Brazier is not a protective film layer as employed in Applicant's invention. Rather, it serves its intended purpose as a gas barrier. There is nothing to suggest that it would protect against migration of an antifog composition into an adjacent nylon since there is no antifog composition in Brazier.

Brazier has two alternate structures of his invention: in Fig. 2, the saran barrier is between the nylon layer and the exterior polyethylene (heat seal) layer. In Fig. 2A the saran layer is between the nylon layer and the polypropylene layer. This clearly shows that there is absolutely no suggestion in Brazier that the saran layer can act as a protective layer for the nylon film when facing a migrating antifog layer from another film layer when on a roll. There is nothing to suggest to one skilled in the art to use one of the structures of Brazier over the other one.

It is respectfully submitted that one skilled in the art, when faced with improving the antifog-containing film of Toney et al., would not consider the teachings of Brazier to modify Toney et al.'s structure since Brazier has nothing to do with an antifog-containing film. Thus, since Brazier is non-analogous are one skilled in the art would not combine the teachings of the two references as suggested in the rejection. Additionally, since the saran layer of Toney et al. is optional, there would be no compelling reason for one skilled in the art to modify this structure with a structure of Brazier in which the saran layer is a necessary component.

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Furthermore, assuming arguendo that it were appropriate to combine the teachings of the two references, such combination would still not result in the claimed invention. Firstly, it is respectfully submitted that if one skilled in the art used any teaching from Brazier, such person would employ the structure of Fig. 2A where the saran layer is between a nylon layer and a polypropylene layer since that structure is more similar to that of Toney et al. where the saran layer is between a polyester or nylon layer and an EVA layer. There is nothing to suggest to one skilled in the art to place the saran layer outwardly from the surface of the nylon layer, since this is not the structure of Toney et al. Both references are using the saran barrier as a gas barrier and there is no recognition that a saran layer would in any way provide protection against migration of an antifog composition into a nylon layer of an adjacent film layer when the structure is in roll form. Moreover, in neither the structure of Toney et al. nor either structure of Brazier is a saran layer an exterior layer that can be used to block an antifog composition. Rather, in Toney et al. the saran layer faces interiorly of the nylon layer, as in the Fig. 2A embodiment of Brazier, and in the Fig. 2 embodiment of Brazier the saran barrier has an exterior polyethylene layer which is not required in the present invention.

Therefore, Applicant submits that without the improper use of his own disclosure against him, one skilled in the art would simply not be led from the proposed combination of references to the structure and method claimed herein.

It is also pointed out that in the Office Action it is alleged that Toney et al. disclose a "protective" film "selected from the group consisting of polyvinylidene chloride, polyurethanes, amine modified polyurethanes, epoxies, polyesters, acrylics, polyols and combinations thereof", when in fact the only film disclosed in Toney et al. of the claimed group is polyvinylidene chloride. There is no suggestion of polyurethanes or any other member of the claimed Markush group.

It is respectfully submitted that independent claims 43, 51 and 54 are patentable over any combination of Toney et al. and Brazier. These claims call for an antifog-containing film, something that is totally missing in Brazier. These claims further call for the protective layer to prevent migration of the antifog composition of

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one layer of the film into the nylon film of an adjacent layer. This feature is also totally missing in both references.

Accordingly, it is respectfully submitted that independent claims 43, 51 and 54 are patentable over any combination of Toney et al. and Brazier.

In addition, it is submitted that claims 44-50 which are dependent on claim 43 are patentable for the same reasons, as well as the following reasons. Claim 44 recites that the protective film is a polyurethane. Since neither Toney et al. nor Brazier disclose a protective polyurethane film it is respectfully submitted that claim 44 further defines in a patentable manner over these references. Claim 46 recites that the multilayered film consists essentially of the stated layers, which is also not shown in either reference. Claim 49 claims that the nylon film comprises a nylon/EVOH/nylon film which structure is also not disclosed in either reference. Finally, claim 50 calls for the multilayered film to be heat shrinkable, which is likewise not shown in the references.

Regarding independent claim 51, this claim is similar to claim 43 but calls for the protective film to be polyurethane. Thus, claim 51 is similar to claim 44 and is submitted to be further patentable over the references for the same reasons – namely, neither patent discloses a polyurethane protective layer.

Claims 52 and 53 are dependent on claim 51 and are likewise submitted to be patentable. Furthermore, these claims call for a nylon/EVOH/nylon film and they are submitted to be further patentable for the same reasons as claim 49.

Independent claim 54 is similar to claim 43 but calls for the multilayered film to consist of the sealant film, the nylon film and the protective film. This claim is similar to claim 46 and is submitted to be further patentable for the same reasons.

In summary, it is respectfully submitted that claims 33-37 and 43-54 are patentable over any combination of Toney et al. and Brazier and should be allowed.

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The only other reference that was applied in the Office Action was Hatley et al. USP 6,447,892. However, since Hatley et al. was not applied against claim 42 which recited the protective films claimed herein, it is clear that Hatley et al. is likewise not pertinent to all of the presently submitted claims.

In summary, it is respectfully submitted that claims 33-37 and 43-54 are patentable and should be allowed. Early notification to that effect is most respectfully solicited.

Should the Examiner believe that a discussion with Applicant's attorney would in any way advance the prosecution of this application, he is respectfully requested to telephone the undersigned.

Respectfully submitted,  
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